

**RULES
OF
TENNESSEE DEPARTMENT OF HEALTH
DIVISION OF HEALTH RELATED BOARDS**

**CHAPTER 1200-10-1
GENERAL RULES AND REGULATIONS**

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1200-10-1-.01 GENERAL DEFINITIONS.

- (1) Commissioner - shall mean the Commissioner of the Tennessee Department of Health.
- (2) Department - shall mean the Tennessee Department of Health.
- (3) Division Of Health Related Boards - shall mean the Administrative Office established by the Commissioner for the control of all administrative, fiscal, inspectional, clerical and secretarial functions of the following Boards, Councils and Committees:
 - (a) Board of Chiropractic Examiners
 - (b) Board of Communications Disorders and Sciences
 - (c) Board of Dentistry
 - (d) Board of Dietitian/Nutritionist Examiners
 - (e) Board of Dispensing Opticians
 - (f) Board of Electrolysis Examiners
 - (g) Board of Medical Examiners
 - (h) Board of Nursing
 - (i) Board of Examiners for Nursing Home Administrators
 - (j) Board of Occupational and Physical Therapy Examiners
 - (k) Board of Optometry
 - (l) Board of Osteopathic Examination
 - (m) Committee on Physician Assistants
 - (n) Board of Registration in Podiatry
 - (o) Board for Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists
 - (p) Board of Examiners in Psychology
 - (q) Board of Respiratory Care
 - (r) Board of Social Worker Certification and Licensure
 - (s) Board of Veterinary Medical Examiners
 - (t) Medical Laboratory Board
 - (u) Board of Alcohol and Drug Abuse Counselors
 - (v) Tennessee Massage Licensure Board
 - (w) Committee for Clinical Perfusionists
 - (x) Council of Certified Professional Midwifery
 - (y) Council for Licensing Hearing Instrument Specialists
 - (z) Tennessee Advisory Committee for Acupuncture.
- (4) Director - shall mean the person duly appointed by the Commissioner to serve as the Administrative Officer of the Division of Health Related Boards.

(Rule 1200-10-1-.01, continued)

- (5) Boards - shall mean all Boards, Councils, and Committees assigned to or hereafter assigned to the Division of Health Related Boards by law.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-101, 63-1-132, 63-17-201, and Public Chapters 576 and 685 of the Public Acts of 2000. **Administrative History:** Original rule certified June 7, 1974. (Formerly chapter 1200-6-1; filed December 3, 1990; effective January 15, 1991). Amendment filed August 25, 1995; effective November 8, 1995. Amendment filed November 22, 1999; effective March 29, 2000. Amendment filed August 31, 2000; effective December 29, 2000.

1200-10-1-.02 PERSONNEL ADMINISTRATION.

- (1) The Director of Health Related Boards, with the approval of the Commissioner and the concurrence of the Boards, shall employ all staff assigned to or performing duties for the Boards. Such staff shall be employed in accordance with the rules and regulations governing personnel established by the Department of Personnel and the Department of Finance and Administration and in conformance with the policies of the Tennessee Department of Health.
- (a) No personnel shall be employed in any classification until the appropriate position has been established. Positions may not be established unless provided for in the current approved operating budget. Requests for the establishment of positions shall be made to the Director, in writing at least 60 days in advance and forwarded to the Division of Personnel, Tennessee Department of Health.
- (b) No personnel shall be employed, or a position filled, without the prior approval of the Director and the Division of Personnel of the Tennessee Department of Health.
- (c) All contracts for the services of consultants, court reporters and other special services shall be negotiated through the Office of Business Administration, Tennessee Department of Health.
- (d) Requests for “change of status” of incumbent personnel, i.e., promotion, salary adjustment, change in classification, etc., shall be made in writing on the appropriate forms, and shall be approved by the Director and Division of Personnel of the Tennessee Department of Health.
- (e) Terminations or separations of full-time personnel, part-time, temporary or Board Members, for any reason, shall be reported to the Director promptly. Such reports shall show the effective date of the separation and the reasons given.
- (f) Leave - Annual and sick leave shall be granted in accordance with the regulations of the State Department of Personnel. Only full time, regular employees are eligible to accrue leave. Leave records shall be maintained in the files of the respective boards and the Personnel Office of the Department. Requests for leave shall be approved by the Director and filed with the Division of Personnel of the Tennessee Department of Health.
- (g) Personnel employed by or for the Boards shall be used interchangeably between the Boards and other Divisions of the Department at the discretion of the Bureau Director when such utilization is advantageous to the administration of the Boards and/or to the Department and/or the State. Provided however, before employment of any physician to serve as medical director for the Board of Medical Examiners the Director shall inform the President of that Board and make the applicant available for interview by the Board.

Authority: T.C.A. §§63-1-132; 63-1-135; 4-5-202 and 4-5-204. **Administrative History:** Original rule certified June 7, 1974. (Formerly chapter 1200-6-1; filed December 3, 1990; effective January 15, 1991). Amendment filed November 16, 1993; effective January 30, 1994. Amendment filed August 25, 1995; effective November 8, 1995.

1200-10-1.03 TRAVEL.

- (1) Reimbursement for travel expense including mileage, lodging, meals, etc. shall be made in accordance with the comprehensive travel regulations of the State. Where applicable, receipts must accompany request for reimbursement.
- (2) Claims for reimbursement for board members shall be approved by the Director.

Authority: T.C.A. §§4-5-221, 63-1-113, and 63-1-132. **Administrative History:** Original rule certified June 7, 1974. (Formerly chapter 1200-6-2; filed December 3, 1990; effective January 15, 1991). Amendment filed November 22, 1999; effective March 29, 2000.

1200-10-1.04 PER DIEM. Per Diem for board members will be allowed within the limits prescribed by statute and the approved annual budgets. Per Diem claimed will be based on “days” of service to the respective Board. Claims for reimbursement of per diem must be approved by the appropriate officer of the Board prior to being submitted to the Director. All claims for per diem must show the actual days worked, the service performed and the amount of Per Diem claimed.

Authority: T.C.A. §4-5-221. **Administrative History:** Original rules certified June 7, 1974. (Formerly chapter 1200-6-2; filed December 3, 1990; effective January 15, 1991).

1200-10-1.05 ANNUAL BUDGETS.

- (1) Annual operating budgets of the Boards shall be prepared in accordance with the policies and directives of the Department of Finance and Administration, the Office of Business Administration of the Department, and the State statutes governing the operation of the Boards.
- (2) Budgets shall be prepared by the Administrative Office of the Health Related Boards, and submitted to the Director for review prior to submission to the Office of Financial Management of the Tennessee Department of Health.
- (3) Budgets shall reflect the actual and necessary operating expenses of the Board and shall be commensurate with the revenues derived through the Boards.
- (4) The annual work program will be based upon the funds made available to the Boards by the General Assembly.

Authority: T.C.A. §§63-1-132, 63-1-135, 4-85-202, and 4-5-204. **Administrative History:** Original rule certified June 7, 1974. (Formerly chapter 1200-6-1; filed December 3, 1990; effective January 15, 1991). Amendment filed August 25, 1995; effective November 8, 1995.

1200-10-1.06 PURCHASING AND PROCUREMENT.

- (1) Purchases of materials, supplies and equipment shall be made in accordance with the regulations and policies of the Department of General Services and the Department of Health.
- (2) Requests for the procurement of materials, supplies, and equipment shall be submitted to the Director for review and approval. Requests should include all descriptive information available of the items desired, and shall include an adequate justification of need.
- (3) To the extent possible, all printing will be performed in the printing facilities of the State. Specialized printing will be contracted to private enterprise. Requests for printing, along with samples and/or exhibits are to be submitted to the Director for approval and processing.
- (4) Each Board shall be accountable for all non-expendable State property purchased for or assigned to it, and maintain a current inventory of such property.

(Rule 1200-10-1.06, continued)

- (5) Special detail memoranda on procurement policies will continue in effect unless cancelled or revised.
- (6) All equipment and other non-expendable property purchased for the Boards shall be used interchangeably between the Boards when such utilization is advantageous to the Administration of the Boards and to the State.

Authority: T.C.A. §§63-1-132, 63-1-135, 4-5-202, and 4-5-204. **Administrative History:** Original rule certified June 7, 1974. (Formerly chapter 1200-6-1; filed December 3, 1990; effective January 15, 1991). Amendment filed August 25, 1995; effective November 8, 1995.

1200-10-1.07 REVENUES.

- (1) All fees, fines and other revenues remitted to the Boards, pursuant to law and regulations, shall be deposited to the individual Board's revenue account unless otherwise directed by statute. The Budget Director shall make such allotments from the general fund as necessary for the proper and necessary operating expenses of the Boards. Such allotments shall be dispersed under the general budgetary laws of the State and the regulations of the Department of Finance and Administration and the Tennessee Department of Health.
- (2) Certificates of Deposit shall be forwarded promptly to the Office of Business Administration, Tennessee Department of Health. Deposits shall be made in accordance with procedures established by the State Comptroller. Revenue Codes assigned by the Department will be used to identify the source of the funds.
- (3) Receipts, deposit slips and other revenue documents shall be maintained in such order as to satisfy the requirements of the State Comptroller and the Division of Internal Audit of the Department.
- (4) Refunds from revenues will be processed by the Department on request on the basis of documentation furnished by the Boards.

Authority: T.C.A. §§63-1-132, 63-1-137, 4-5-202, and 4-5-204. **Administrative History:** Original rule certified June 7, 1974. (Formerly chapter 1200-6-1; filed December 3, 1990; effective January 15, 1991). Amendment filed August 25, 1995; effective November 8, 1995.

1200-10-1.08 RESPONSIBILITIES OF THE DIVISION OF HEALTH RELATED LICENSING.

- (1) The Division of Health Related Boards shall employ the required staff to perform the necessary clerical and administrative functions for the Boards. Requests for personnel shall be sent to the Director who will ascertain the need and classification of such personnel, including inspectors, consultants, court reporters, clerical, administrative, etc.
- (2) The Division of Health Related Boards shall employ investigators for the purpose of investigating complaints and charges made against the licensees of all Boards assigned to the Division. The Boards may request, in writing, that such investigations be made as appropriate and the Division will provide reports of such investigations to the Boards for any action indicated
- (3) The Division of Health Related Boards shall provide or ascertain that office space is provided to the Boards in order to properly carry out their functions. In providing space, the Director shall determine that the space is consistent with the efficient administration of the Boards.
- (4) The Division of Health Related Boards shall be responsible for providing special space requirements for the Boards for the conduct of examinations, hearings and meetings, and the Director shall approve all leases or agreements for the rental of such space in advance. Available space in the State or public buildings, or other suitable space as may be available at no cost shall be utilized to the fullest extent.

(Rule 1200-10-1.08, continued)

- (5) Administrative hearings shall be conducted in accordance with the laws and regulations applicable to each board. Court reporters and witnesses shall be provided as required and shall be compensated as prescribed by law and/or State policy. The office of the Attorney General shall be advised well in advance and kept currently informed of hearings in which he will be expected to participate.
- (6) The Division of Health Related Boards shall serve as the coordinating office between the Boards on matters of common concern or interest and it shall be its' responsibility to assist the Boards in any reasonable manner in carrying out their responsibilities and programs.

Authority: T.C.A. §§63-1-132, 68-1-101, 4-5-202, and 4-5-204. **Administrative History:** Original rule certified June 7, 1974. (Formerly chapter 1200-6-1; filed December 3, 1990; effective January 15, 1991). Amendment filed August 25, 1995; effective November 8, 1995.

1200-10-1.09 FEES.

- (1) Directories and/or Computer Printouts of licensees shall be made available upon request and the fees charged for such information shall be based on and equal to the costs derived to create the requested information.
- (2) Payments for any imposed Civil Penalties shall be made by Cashier's Check, Certified Check, Money Order or Cash. Payment by personal or business check will not be accepted.

Authority: T.C.A. §§63-1-114, 63-1-132, 4-5-202, and 4-5-204. **Administrative History:** Original rule filed August 5, 1986; effective September 19, 1986. Amendment filed January 13, 1990; effective March 17, 1990. (Formerly chapter 1200-10-1.01; filed December 3, 1990; effective January 15, 1991). Amendment filed August 25, 1995; effective November 8, 1995.

1200-10-1.10 LICENSEE RENEWAL APPLICATIONS. The Division, with the Commissioner of Health's approval, establishes a system of license renewal at alternative intervals which will allow for the distribution of the license workload as uniformly as is practicable throughout the calendar year. Notwithstanding any law to the contrary, licenses issued under the alternative method are valid for twenty-four (24) months, and expire on the last day of the last month of the license period. All authorizations to practice must be renewed pursuant to the Division's alternative renewal system.

- (1) Definitions - the following terms as used in this rule shall have the following meanings ascribed to them:
 - (a) Expiration Date - The date on which an existing license, certification or registration to practice any of the health related professions is scheduled to expire and on which renewal is due.
 - (b) License - Any license, certificate or registration to practice any profession regulated by Boards, Councils or Committees assigned to the Division of Health Related Boards.
 - (c) Licensee - Any person holding a license as defined in this rule.
 - (d) Prorated Fees - The fees to be assessed to cover the renewal of licenses during any transitional period required to bring a licensee into a twenty-four (24) month renewal cycle.
- (2) No renewal application will be accepted after the last day of the month following the licensee's expiration date under the alternative method authorized in this rule.
- (3) Notwithstanding any Board, Council, or Committee rule to the contrary, the Division establishes an electronic renewal procedure whereby licensees may apply via the Internet to request renewal of their

(Rule 1200-10-1.10, continued)

authorization to practice their profession. The application to renew an authorization to practice a profession can be accessed at:

www.state.tn.us/health/

Authority: T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-1-107, 63-1-108, 63-1-119, and 63-1-132. **Administrative History:** Original rule filed February 11, 1992; effective March 27, 1992. Amendment filed August 18, 1994; effective November 1, 1994. Amendment filed November 22, 1999; effective March 29, 2000. Amendment filed August 31, 2000; effective December 29, 2000. Amendment filed August 23, 2001; effective December 28, 2001.

1200-10-1.11 DECLARATORY ORDERS

- (1) Purpose - Whenever any person is affected by any statute governing the Division or any agency listed in T.C.A. §68-1-101(8) or any statute in which authority is granted to the Division or any of those agencies to take any action, or any rule promulgated or order issued by the Division or any of those agencies, he or she may petition for a declaratory order to determine the validity or applicability of the statute, rule or order. This rule governs the procedures for submission, consideration and disposition of petitions for declaratory orders for the Division of Health Related Boards and each of the agencies listed in T.C.A. §68-1-101(8).
- (2) Intent
 - (a) It is the intent of this rule that petitions filed pursuant to this rule shall be addressed by the agency whose statute, rule or order is the subject of the petition. The Division shall address only those petitions which involve provisions of T.C.A. Title 63, Chapter 1 or any rule promulgated or any order issued pursuant thereto.
 - (b) It is the intention of this rule that all informal attempts to resolve any questions of validity or applicability of any statute, rule or order be made prior to the filing of any petition for a declaratory order. Legal representation is not required but persons are encouraged to first contact an attorney to see if their questions can be resolved. If their attorney cannot definitively answer the questions after review of all pertinent law, rules, or opinions and pursuant to all other means provided by law, then a petition for a declaratory order may be appropriate.
- (3) Definitions - For purposes of this rule the following terms shall have the meanings ascribed to them:
 - (a) Affected Person - As these words are used in T.C.A. §4-5-223 mean a person upon whom a statute, rule or order produces a specific and direct effect or result.
 - (b) Agency - Any of the Boards, Committees, or Councils listed in T.C.A. §68-1-101 (8).
 - (c) Division - The Department of Health's Division of Health Related Boards and which, for purposes of this rule, is also a separate agency.
 - (d) Notice of Hearing - The formal document issued by the Department of Health which notifies a petitioner that the Division or an agency has agreed to convene a contested case and issue a declaratory order.
 - (e) Notice Promulgated - As those words are used in T.C.A. §4-5-224 (c) to specify a date against which the forty-five (45) day notice period runs, mean the first (1st) day of the month in which the published notice of hearing appears in the Tennessee Administrative Register.
 - (f) Petitioner - The person who has filed a petition for a declaratory order, and who has the burden of going forward with the petition, and as to whom any declaratory order issued shall be binding.

(Rule 1200-10-1.11, continued)

- (g) Receipt - As that term is used in T.C.A. §4-5-223 (c) shall mean:
 - 1. For petitions addressable by the Division, the date of receipt of the petition in its offices.
 - 2. For all agencies listed in T.C.A. §68-1-101 (8), the first date after receipt of the petition by the administrative staff that the agency meets and can lawfully conduct business.
- (h) Set - As that term is used in T.C.A. §§4-5-223 (c) and 4-5-224 (c) in relation to contested case hearings involved in declaratory order proceedings, means to establish a future date on which the contested case could be heard.
- (4) Contents Of The Petition - Any person wishing to file a declaratory order petition must do so by completing the Petition for Declaratory Order form which can be obtained from the Division or any agencies' administrative office. Failure to provide all requested information in sections 1, 3, 4, 5, 6 and 7 of the form will invalidate the petition. A copy of the form is reproduced in paragraph (10) of this rule.
- (5) Filing - All declaratory order petitions must be filed in writing on the approved form by sending them to the appropriate agency's administrative office.
- (6) Consideration Of The Petition - In considering the petition the agency may do the following:
 - (a) Either grant the petition (agreeing to convene on some future date a contested case hearing after which a declaratory order will be issued), or deny the petition, or take no action.
 - 1. A petition must be denied if:
 - (i) The only issue raised is the facial constitutionality of a statute; or
 - (ii) The Petitioner is not an affected person; or
 - (iii) The statute, rule or order which is the subject of the petition is not within the agency's primary jurisdiction. The petition must be addressed towards a statute, or rule in the agency's practice act or a statute which authorizes it to take action, or an order issued by the agency; or
 - (vi) The petition itself is deficient for failure to include all necessary information.
 - 2. A petition may be granted at the discretion of the agency only if the petition is addressing:
 - (i) A statute and the petition concerns any one of the following:
 - (I) The application of the statute; or
 - (II) The validity of the statute; or
 - (III) The constitutionality of the agency's application of the statute.
 - (ii) A rule and the petition concerns any one of the following:
 - (I) The application of the rule; or
 - (II) The validity of the rule; or

(Rule 1200-10-1-.11, continued)

- (III) The constitutionality of the agency's application of the rule; or
 - (VI) The facial constitutionality of the rule unless the rule is substantially repetitive of the statute on which it is based.
- (iii) An order and the petition concerns any one of the following:
 - (I) The application of the order; or
 - (II) The validity of the order; or
 - (III) The constitutionality of the agency's application of the Order.
- (b) If the petition is denied, the petitioner shall be notified of that action in writing.
- (c) If the petition is granted, the matter will be referred to the attorneys for the Department of Health for filing of a Notice of Hearing. Granting of the petition does not mean that the Petitioner's requested relief is granted. It merely means that the agency grants a hearing on the request for the declaratory order.
- (7) Notice Of Hearing - After the agency grants a petition, a Notice of Hearing shall be issued to the petitioner which contains all of the following information:
 - (a) All information required by the declaratory order petition form (incorporation by reference and attachment of the petition is allowed); and
 - (b) The date, time and location of the contested case hearing to be held on the petition. No contested case hearing on the petition may be scheduled prior to the expiration of forty five (45) days from the first (1st) day of the month in which the published notice of hearing appears in the Tennessee Administrative Register.
- (8) Publication And Distribution - The Notice of Hearing will be filed with the Secretary of State's Administrative Procedures Division office for assignment of an administrative judge and its Publications Division for publication of the notice in the Tennessee Administrative Register. Copies of the Notice of Hearing and Petition shall be sent to all professional organizations and associations and other agencies whom the agency reasonably considers are likely to have an interest in the petition.
- (9) Disposition - When the petition is the subject of a contested case hearing, the Petitioner has the burden of proof in persuading the agency of the correctness of his/her position on all issues. After a full hearing on the matter, the agency shall issue an order which complies with the requirements of the "Administrative Procedures Act", (T.C.A. §§4-5-101, et seq., 4-5-201 et seq., and 4-5-301 et seq).
- (10) Copy Of Declaratory Order Form:

Petition For Declaratory Order

The process for requesting a Declaratory Order is governed by T.C.A. §§4-5-223, 224 and 225. For this to be considered an actionable Petition for Declaratory Order you must provide all the information requested below and sign, and deliver the petition. Note - Failure to provide the information required in paragraphs 1, 3, 4, 5, 6, and 7 below will invalidate the petition.

1. Petitioner's Name: _____
Address: _____

(Rule 1200-10-1.11, continued)

Telephone Number: () _____

2. Petitioner's Attorney's Name : _____

Address: _____

Telephone Number: () _____

3. Organization, if any, that the Petitioner Represents:

Organization Name: _____

Address: _____

Telephone Number: () _____

4. Provide a statement of the facts which led to the filing of this petition. Include all facts you believe necessary for the agency to make a decision in this matter:

5. Provide a summary of the relief you are requesting including the specific nature of the requested order and the conclusions you would like the agency to reach at the conclusion of the declaratory order process:

6. Citation to the statute, rule or order which is the subject of the petition:

7. State how the statute, rule and/or order cited above specifically and directly produces an effect or result upon you:

Signature

Date

Mail or Deliver to: Administrator, [Name of Appropriate Agency]
First (1st) Floor Cordell Hull Building
425 5th Avenue North
Nashville, Tennessee 37247-1010

Authority: T.C.A. §§4-5-202, 4-5-202, 4-5-223, 4-5-224, and 63-1-132. **Administrative History:** Original Rule filed December 17, 1998; effective April, 30 1999.